

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care License of
Judy Marquardt

ORDER DENYING APPLICATION FOR
ATTORNEY FEES AND COSTS

This matter came on for hearing before Administrative Law Judge Beverly Jones Heydinger on October 13, 2004. Findings of Fact, Conclusions and Recommendation were issued on November 18, 2004. The Commissioner of Human Services issued an Order on January 3, 2005, rescinding the revocation of Judy Marquardt's family childcare license. Olmsted County Social Services requested reconsideration of the Commissioner's Order, which was denied on January 24, 2005.

Appearances: Geoffrey A. Hjerleid, Senior Assistant Olmsted County Attorney, 151 4th Street SE, Rochester, MN 55904, on behalf of the Department of Human Services ("Department"). Mark G. Stephenson, Stephenson & Sutcliffe, P.A., 1635 Greenview Drive S.W., Rochester, MN 55902, on behalf of Judy Marquardt ("Respondent").

Counsel for the Respondent filed an Application for Fees and Costs on January 6, 2005. Counsel for the Department filed a response in opposition to the Application that was received on January 27, 2005.

**THESE FINDINGS OF FACT, CONCLUSIONS AND ORDER ARE PUBLIC,
BUT THE RECORD UPON WHICH THEY ARE BASED CONTAINS INFORMATION
THAT IS NOT PUBLIC.**

FINDINGS OF FACT

1. The Findings of Fact, Conclusions, and Recommendation issued on November 18, 2004 are incorporated by reference.
2. The Respondent is licensed by the Department of Human Services to provide childcare.
3. The Department initiated the underlying proceeding to revoke the Respondent's license.

Based on the foregoing Findings of Fact, the Administrative Law Judges makes the following:

CONCLUSIONS

1. The Administrative Law Judge has jurisdiction to consider the Application for Fees and Costs, pursuant to Minn. Stat. §15.472.

2. The Respondent is not a “party” entitled to recover costs and fees under Minn. Stat. § 15.472 because she is a person providing services pursuant to licensure by the Department of Human Services, and the underlying dispute involved the licensing for those services.^[1]

Based upon the foregoing Findings of Fact and Conclusions, and for the reasons set forth in the accompanying Memorandum, attached hereto and incorporated herein:

IT IS HEREBY ORDERED:

The Respondent’s Application for Fees and Costs is DENIED.

Dated this 17th day of February, 2005

S/ Beverly Jones Heydinger

BEVERLY JONES HEYDINGER

Administrative Law Judge

MEMORANDUM

The Respondent has filed an Application for Fees and Costs pursuant to Minn. Stat. § 15.472. The statute permits a prevailing party in a contested case proceeding to recover fees and other expenses “if the position of the state was not substantially justified.” However, the term “party” is defined for this purpose in Minn. Stat. § 15.471, subd. 6(c), to specifically exclude a person licensed by the Department of Human Services, when that person is named in a matter involving that license. Such persons may not recover their fees and costs.

B.J.H.

^[1] Minn. Stat. § 15.471, subd. 6(c).